IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9082 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT. NEELAM SHARMA W/O SHRI PRADEEP SHARMA - Petitioner(s)

Versus

UNION OF INDIA THR'GENERAL MANAGER & 1 - Respondent(s)

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Appearance :

MR GR MALHOTRA for Petitioner(s) : 1,
MR RAVI KARNAVAT for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/12/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule. Mr.Ravi Karnavat, learned Standing Counsel for Railways waives service of rule on behalf of the respondents. By order dated 10th April 2007 this Court had issued notice for final disposal. We have accordingly taken up the petition for final disposal and have heard Mr.G.R. Malhotra, learned advocate for the petitioner-original applicant and Mr.Ravi Karnavat, learned Standing Counsel for the Railways.

2. The facts leading to filing of this petition, briefly stated are as under: The petitioner had applied for the post in Class III Group in the Railways against the quota of handicapped persons in the category of deaf and dumb. The petitioner was selected and was appointed to post of Pipe Fitter on 9th November 2000. The said designation was later changed to Armature Winder. However, subsequently by notice dated 28th January 2003 the petitioner was called upon to show cause as to why her services should not be terminated as she was not eligible to be appointed against the quota of deaf and dumb persons. The petitioner challenged the same before the Jabalpur Bench of the Central Administrative Tribunal. After that application was disposed of, the petitioner was given another Show Cause Notice, calling upon her to show cause why her services should not be terminated. The petitioner sent a detailed representation dated 20th November 2003 against the said Show Cause Notice and relied upon the provisions of the Persons

with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as "**the said Act**"]. Thereafter, by order dated 19th December 2003, the petitioner's services were terminated.

3. It appears that in the meantime the petitioner had filed Original Application No.139 of 2004 for challenging the Show Cause Notice dated 20th November 2003. Unfortunately, however, in spite of the termination order having already been passed on 19th December 2003, the said order was not challenged in Original Application No.139 of 2004 filed in the year 2004. When this fact came to the notice of the Tribunal, the Tribunal permitted the petitioner to withdraw the above numbered Original Application with liberty to file a fresh application for challenging the termination order dated 19th December 2003. That permission was granted by the Tribunal on 19th February 2005 to withdraw the application with liberty to file a fresh application. Fresh application came to be filed by the petitioner on 7th March 2005 being Original Application No.205 of 2005.

4. However, by the impugned judgement dated 6th July 2006, the Tribunal dismissed Original Application No.205 of 2005 only on the ground that the application was time barred and that there was no Miscellaneous Application filed by the petitioner for condonation of delay in spite of the objection raised by the respondents that the

application was time-barred. It appears that the petitioner thereupon moved a review application being Review Application No.20 of 2006 before the Tribunal. However, the Tribunal rejected that application also by the impugned order dated 22nd August 2006. The petitioner has thereupon filed the present petition challenging both the orders dated 6th July 2006 and 22nd August 2006.

5. Mr.Malhotra, learned advocate for the petitioner has submitted that Original Application No.139 of 2004 was filed for challenging the Show Cause Notice dated 13th November 2003 within the period of limitation on 19th February 2005 and that application was permitted to be withdrawn with liberty to file a fresh petition to challenge termination order dated 19th December 2003 and on 7th March 2005, i.e. within three weeks the petitioner had filed fresh application being Original Application No.205 of 2005. Hence, the Tribunal ought not to have dismissed the same on the ground that there was delay in filing the application and there was no Misc. Application filed for condonation of delay.

6. Mr.Ravi Karnavat, learned standing counsel for the Railways has supported the orders of the Tribunal.

7. Having heard the learned advocates for the parties, we find that the approach adopted by the Tribunal is too technical and

pedantic to be approved by us. When the facts leading to filing of Original Application No.205 of 2005, which are narrated in para 3 hereinabove were already set out in the memo of the said application, it was very clear that even if there was any technical delay in filing Original Application No.205 of 2005 (because the impugned order of termination was passed on 19th December 2003 and Original Application No.205 of 2005 was filed on 7th March 2005 beyond the period of one year) explanation for the delay was self contained in the memo of Original Application No.205 of 2005. Considering the fact that the first application was filed within the period of limitation and the second application was filed within three weeks of the permission to withdraw the first application with liberty to file a fresh application, the Tribunal ought not to have adopted such a hyper-technical approach by considering the second application as time barred, when the explanation for technical delay was already condoned in the memo of Original Application No.205 of 2005 itself.

8. We, therefore, set aside the impugned order dated 6th July 2006 in Original Application No.205 of 2005. Considering that the facts narrated in para 3 hereinabove constitute sufficient explanation for the technical delay in filing Original Application No.205 of 2005, we condone the delay in filing Original Application No.205 of 2005 and direct the Tribunal to decide Original Application No.205 of 2005 on merits in accordance with law as

expeditiously as possible, preferably within three months from the date of receipt of this judgement. In order to save loss of time arising from issuance of fresh notice, we direct the petitioner as well as the respondents to appear before the Tribunal on 4th February 2008.

9. The Special Civil Application is disposed of in the aforesaid terms. Rule is made absolute. No order as to costs.

(M.S. SHAH, J.)

(RAVI R. TRIPATHI, J.)

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